

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-194055

DATE: March 15, 1979

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MATTER OF: Northern Illinois University at De Kalb, IL

DIGEST:

[Protest Concerning Rejection of Proposal as Untimely]

1. In absence of showing that proposal met solicitation conditions for consideration of late proposals, protester's late proposal was properly rejected by agency notwithstanding transmission by "Express Mail Service" which guarantees timely delivery.
2. Where it is clear from protester's initial submissions that protest is without legal merit, neither case development nor requested conference is necessary, and summary denial is in order

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Northern Illinois University (NIU) protests the rejection of its proposal under solicitation No. NE-50169 issued by the Department of State's Agency for International Development (AID). The NIU proposal, transmitted by U. S. Postal Service "Express Mail Service", was received by AID after the designated time had passed for proposal submission. Because late delivery by "Express Mail Service" is not one of the limited solicitation exceptions allowing for acceptance of late proposals, we conclude that NIU's proposal was properly rejected.

Exceptions to the general rule requiring rejection of late proposals may be permitted only in the exact circumstances provided by the solicitation. Defense Products Company, B-185889, April 7, 1976, 76-1 CPD 233. The applicable portions of this solicitation's late proposal clause, make it clear that a late proposal may be considered only if sent by

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registered or certified mail "not later than the fifth calendar day prior to the date specified for receipt of offers" or where "the late receipt was due solely to the mishandling by the Government after receipt at the Government installation." Federal Procurement Regulations § 1-3.802-1 (1964 ed. Amend. 193). ✓

NIU maintains that its late proposal falls under the Government mishandling exception arguing that the U. S. Postal Service is a "Government Installation". However, we have held that mishandling by a Government agency refers to mishandling after receipt of the offer in the procuring agency's local office. The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21; Decilog, Inc., B-193914, February 5, 1979, 79-1 CPD ____. Thus, a failure on the part of the Postal Service does not constitute mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.


Even though none of the solicitation's late proposal exceptions applies in this case, NIU implies that "Express Mail Service" should be treated as an exception. Our Office has consistently held that an offeror has the responsibility of assuring that its proposal arrives at the proper time and that responsibility for lateness is borne by the offeror unless a solicitation exception exists. See Dynamic's International, B-190026, November 30, 1977, 77-2 CPD 426, and decisions cited therein. Since the regulatory clause contained in this solicitation is specific as to the circumstances under which a late bid may be considered, we see no basis for providing an additional exception for "Express Mail Service". Kessel Kitchen Equipment Co., Inc., supra. Thus, the protester assumed the risk of late delivery in selecting other than registered or certified mail. Hesse Machine & Mfg. Co., Inc., B-193984, February 23, 1979, 79-1 CPD ____.

It is clear from NIU's initial submissions that this protest is legally without merit. Therefore,

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we are deciding the matter without obtaining an agency report and without the conference requested by NIU as it would serve no useful purpose. The Brunton Company, B-192243, August 29, 1978, 78-2 CPD 151; Plaza de las Armas, Inc., B-188602, June 30, 1977, 77-1 CPD 468.

The protest is summarily denied.


Deputy Comptroller General
of the United States